THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.6624 of 2006

Dt.04-04-2006

Between:

Musullapalli Narendra Phani Kumar

..petitioner

and

1.The Prakasam District Co-op. Central Bank Ltd., Ongole
rep. By its Deputy Registrar-cum-Special Officer, Ongole and
others.

..Respondents.

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Oral Order:

Petitioner who claims interest in the property, which is sought to be auctioned pursuant to the auction notice dated 15-02-2006 filed the present writ petition contending that as per the Will executed by their late grand—father his father respondent No.4 will not have any right to mortgage the said property with the 3rd respondent—Society, since the properties are bequeathed in favour of the petitioner and also 5th respondent under the Will dated 26-11-1979. Petitioner also filed O.S.No.24 of 2004 on the file of Senior Civil Judge, Markapur against his father and

brother as defendants 1 and 2 in which the 3rd respondent herein is also impleaded as defendant No.3. In the said suit an injunction is also sought by filing I.A.378 of 2004 wherein notice has been ordered. While so, properties were put to auction and the same is proceeded. The same cannot be proceeded in view of pendency of civil litigation.

Sub-Rule (21) (a) of Rule 52 of A.P. Cooperative Societies Rules, 1964 (for short "the Rules") contemplates if any person is having interest in the immovable property, which is not liable for attachment, he can file claim application or objection against attachment of the property in execution proceedings. On filing such claim application or objection, the sale officer shall investigate the claim or objection and dispose of the same on merits.

Sub Rule 21 (c) also contemplates that such claim or objection is preferred by any party against whom an order is made may institute a suit within six months from the date of the order to establish the right over the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive.

In view of the same, petitioner without making any claim application as contemplated under sub-Rule (21) of Rule 52 of the Rules and exhausting the remedy available, cannot invoke the jurisdiction of this Court under Article 226 of the Constitution.

It is well settled that disputed questions of fact, namely, succession and execution of the Will cannot be a subject matter of a petition filed under Article 226 of the Constitution. In view of the same, petitioner is at liberty to file a claim application as contemplated under Sub-Rule (21) of Rule 52 of the Rules. If such a claim application is filed, it is incumbent on the sale officer to pass appropriate orders on such application.

The writ petition is accordingly dismissed. No costs.

_____ A.GOPAL REDDY, J.

04-04-2006

Note: Issue CC today

(Bo)

Murthy